

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

YANKEE GAS SERVICES COMPANY

Employer

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 457,  
AFL-CIO

Petitioner

Case No. 34-RC-2079

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and that no question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer is a public utility engaged in providing gas fuel to homes and businesses. The Petitioner, which presently represents approximately 250 of the Employer's employees, now seeks to represent a unit of approximately 10 full-time and regular part-time Specialist Operations Support (SOS) employees employed by the Employer at its East Windsor, Meriden, Danielson and Waterford facilities. The Employer contends that the petition should be dismissed either because all of the petitioned-for employees are supervisors within the meaning of the Act, or because the only appropriate unit must include all 20 of the Employer's SOS employees in the State of Connecticut. For the reasons noted below, I find that the SOS are not supervisors,

but that the petitioned-for unit is not an appropriate unit. Accordingly, I shall dismiss the petition.

1. Overview of Operations

Vice President – Operations Christopher Beschler has overall responsibility for the Employer's operations. Reporting directly to Beschler is Director of Field Operations Keven Dupre, who has overall responsibility for the Field Operations group, within which five of the SOS work. The Field Operations group is responsible for the safe operation of the Employer's existing infrastructure. It handles all the operations and maintenance functions, and insures that the Employer is compliant with DOT codes and with general operating procedures. Also reporting directly to Beschler is Manager of Capital Construction Edward Flanagan, who has overall responsibility for the Capital Construction group within which the remaining 15 SOS work. The Capital Construction group is primarily responsible for new infrastructure and adding onto the infrastructure, as well as replacement project work within the existing infrastructure.

Reporting directly to Dupre in the Field Operations group are six area operations managers, each of who directly oversees the Employer's facilities where five of the SOS are employed. Timothy Foley is the area operations manager at the East Windsor facility; Michael Fortier is the area operations manager for the Meriden facility; Charles Jones is the area operations manager for the Danielson and Waterford facilities; Daniel Fitzsimmons is the area operations manager for the Danbury, Shelton and Ansonia facilities<sup>1</sup>; and Bret Factora is the area operations manager for the Norwalk and Stamford facilities<sup>2</sup>. Each of these area operations managers has one SOS employee assigned to their area.

Reporting directly to Flanagan in the Capital Construction group are three Construction Supervisors. Three SOS assigned to the East Windsor, Danielson, and Waterford facilities report directly to Construction Supervisor Douglas Faraday; seven SOS assigned to the Meriden and Waterbury facilities report directly to Construction

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<sup>1</sup> Although not entirely clear, the Employer appears to consider Ansonia and Shelton to be part of the Danbury facility for administrative purposes. Accordingly, further references herein to the Danbury facility shall include the Shelton and Ansonia facilities.

<sup>2</sup> Although not entirely clear, the Employer appears to consider Stamford to be part of the Norwalk facility for administrative purposes. Accordingly, further references herein to the Norwalk facility shall include the Stamford facility.

Supervisor Richard Cerniglia; and five SOS assigned to the Norwalk and Danbury facilities report directly to Construction Supervisor David Hatfield.<sup>3</sup>

All employees are subject to the same centrally administered rules, regulations, policies and procedures, and are eligible for the same benefits. Although there is no history of collective bargaining for any of the petitioned-for employees, the Employer and the Petitioner have a lengthy bargaining history regarding other employees, as discussed in detail below.

2. Supervisory status of SOS employees

a. Facts

As noted above, SOS employees work either in the Field Operations Group or in the Capital Construction group. Regardless of their location, their basic job duties are the same. In this regard, the SOS job description offers the following “general summary”:

Plans and performs a variety of technical assignments associated with the installation and replacement of Yankee Gas facilities. Acts as a project leader to technical, clerical and bargaining unit employees, as assigned. In addition, acts as a Yankee Gas representative working directly with the requester (builder/developers, and customers) from the point at which a contract is signed requesting service from Yankee until first gas bill is rendered.

The “Principal Duties” described in the job description include, inter alia, that an SOS “[c]oordinates and provide (sic) work direction to Company and contractor crews installing and maintaining distribution facilities. Initiates and approves field changes to construction and maintenance crew, as required. Reviews and verified (sic) daily work sheets, time sheets and billing quantities.” In addition, and as described in more detail below, the “Principal Duties” includes the performance of “On-Call assignments as required”. Finally, the job description includes the following under “Knowledge, Skills and Abilities”: “Understand labor relations principles and thorough knowledge of the

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<sup>3</sup> The Employer proffered conflicting oral and documentary evidence regarding the work location of three SOS employees (Thayer, Balsys and Dimattia) in the Capital Construction group. I have relied upon the testimony of Manager of Capital Construction Ed Flanagan rather than Employer Exhibit 26 to determine the work location of all SOS. Mr. Flanagan’s testimony is inherently more reliable, as it is consistent with undisputed business records (Employer Ex. 11), and the Petitioner proffered no evidence to contradict his testimony. In contrast, Employer Ex. 26 is a summary of payroll records prepared specifically for the hearing. Thus, it is not a business record, and it was proffered to show the number of on-call hours that SOS were paid, rather than to establish their respective work locations.

Company-Union contract. Must possess excellent communication, written, leadership and administrative ability.”

In practice, the SOS prepares work orders and designs that are required to effectuate any type of infrastructure work. In the Field Operations group, this includes such things as meter rebuilds, replacement of existing service, installation of new residential and small business services, and cutoffs and abandonment of service. In the Capital Construction group, this includes larger projects such as residential subdivisions, gas mains, and commercial and industrial service. In both groups, the SOS may have work related contacts in the field with the employees who perform the actual infrastructure work. In Field Operations, these are usually the Employer’s employees; in Capital Construction, these are usually employees of the contractors who the Employer hires to perform such work. In both situations, there is no evidence that the SOS either assigns or directs the work of such employees. Rather, the SOS may be required to change his or her original work order and design to respond to situations that arise in the field, such as relocating a gas line due to the discovery of ledge or other utility lines. While such design changes clearly affect the work performed by employees in the field, there is no evidence that it involves any of the indicia of supervisory authority enunciated in Section 2(11) of the Act.

The only element of the SOS job duties that involves the exercise of any arguable supervisory authority involves their periodic assignment as an “on-call supervisor”. In this regard, the Employer stipulated that SOS employees while serving as on-call supervisors cannot hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline other employees, or adjust their grievances. The only arguable supervisory authority relied upon by the Employer to show that the SOS are supervisors while serving as an on-call supervisor involves the assignment and direction of employees.<sup>4</sup>

The record establishes that all SOS are assigned on a rotating basis to serve as an on-call supervisor for a one-week period during the hours of 4:30 p.m. and 7:00 a.m. Monday through Friday and at all times on weekends and holidays. Other individuals,

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<sup>4</sup> Although the SOS may also substitute for supervisors during the normal workday, usually to cover for vacations, the record does not reflect the frequency or extent of such occasions, or the nature of their duties and responsibilities. See *Webco Industries*, 334 NLRB 608, 610 (2001).

including project engineers and regular supervisory personnel, are also assigned to serve as on-call supervisors. As a result, approximately one-third of all on-call supervisors are SOS employees. The rotating assignments are established at the outset of each calendar year, and usually average about five weeks per SOS per year. Each SOS serving as an on-call supervisor has a beeper by which they may be contacted in the event of an emergency. The SOS receives no additional pay simply for being on-call. However, in the event that the SOS has to go out to the field to respond to an emergency while serving as the on-call supervisor, they are paid \$40 per hour for the time actually spent in the field.

The on-call supervisor functions as the equivalent of an area operations manager. Thus, each facility has an on-call supervisor assigned during the relevant hours. Also assigned and available at all times during those hours is a “system supervisor on-call”, who functions on a statewide basis as the equivalent of the Vice President of Operations. The on-call supervisor reports directly to the system supervisor on-call. Manager or director level employees serve as system supervisors on call.

The function of the on-call supervisor is to deal with emergencies that arise outside of the regular workday and on weekends and holidays. Such emergencies usually involve reports of gas odors, gas leaks, and fires in structures that have gas service. Such reports are typically received by the Employer’s dispatch center. The dispatcher responds to the report by utilizing an on-call seniority list prepared pursuant to the applicable collective bargaining agreement to dispatch a meter service mechanic to the scene of the report. In the event that the meter service mechanic determines that there is an actual emergency, the dispatcher will contact the on-call supervisor assigned to that area and advise him or her of the emergency. The on-call supervisor will then contact the meter service mechanic telephonically to assess the situation. Depending upon the nature of the emergency, the on-call supervisor may direct the dispatcher to call in additional employees to handle the situation. In calling in other employees, the dispatcher once again utilizes an on-call list that is prepared pursuant to the applicable collective bargaining agreement. In the event that no other on-call employees are available in that area, the on-call supervisor may contact on-call supervisors from other areas to secure additional employees. However, on-call employees are not required to

report to an emergency unless they are the most junior available employee on the on-call list. In the typical situation, all of the above-described duties are performed by the on-call supervisor telephonically from their home, and the on-call supervisor receives no additional compensation for the time spent performing such duties from their home.

In those situations involving the most serious types of gas leak, i.e., Class I, the on-call supervisor will usually report to the scene. At that point, as noted above, the on-call supervisor is compensated at an hourly rate of \$40 for all time spent at the scene. While at the scene of the emergency, the on-call supervisor consults with the meter service mechanic, and determines whether to call in a distribution mechanic or other employees to search for and/or repair the leak. If it is necessary to call in a distribution mechanic or other employees, they will be called to the scene by the dispatcher pursuant to the on-call seniority list in the manner described above. Although the on-call supervisor may release the meter service mechanic or other employees from the scene if their services are no longer necessary, there is no requirement that any employee receive authorization from the on-call supervisor to leave the scene of the emergency. The on-call supervisor may also have to interact with fire and police personnel, as well as residents, customers and anyone else affected by the emergency. This may include making the final decision to evacuate a building. However, any employee, including the meter service mechanic and the distribution mechanic, may order an evacuation under the appropriate circumstances. At some point during such emergencies, the on-call supervisor will contact the system supervisor on-call to apprise him of the situation. Under certain circumstances, the on-call supervisor is required to contact the system supervisor on-call. The on-call supervisor is also required to contact certain federal, state and local agencies depending upon the nature and extent of the emergency. The on-call supervisor may remain at the scene until all work is completed, or may leave at any appropriate time. If the on-call supervisor leaves the scene before all work is completed, the employees will complete the work and leave at the appropriate time without further authorization from the on-call supervisor.

All of the duties and responsibilities entrusted to the on-call supervisor during emergencies are specified and detailed in the Employer's "General Operating Procedures" (GO). The GOs provide instructions to all of the Employer's employees in dealing with emergencies, which is a regular part of the job responsibilities of all

employees. The GOs apply to all employees at all levels regardless of their work location, and all employees are required to know and follow the GOs.

The primary GOs covering emergencies involving on-call supervisors are GO-001 ("System Emergency Plan"), GO-004 ("Operations Emergency Plan"), and GO-311 ("Gas Odor and/or Gas Leakage Investigation"). GO-001 states that in the event of an emergency, including major pipeline leaks, major computer failures, natural gas supply failures, natural disasters, civil disturbances, and terrorist threats, the on-call supervisor is responsible for the "control and overall direction of all emergency operations functions in the area"; "coordination with other area and local city and volunteer agencies"; and "coordination of recovery efforts such as establishing restoration priorities and planning for rebuilding distribution facilities". GO-004 describes the personnel to be alerted, and their respective responsibilities, in the event of an emergency or disaster involving a hazard to persons or property, release of gas from the distribution system, and interruptions in service. According to GO-004, the on-call supervisor initially determines "the most appropriate people, vehicles, equipment and materials to send" to the scene of the emergency. The on-call supervisor is also responsible for making the "Call Before You Dig" notification should power equipment be used for excavations. GO-004 further states the circumstances under which the on-call supervisor is to notify the system supervisor on-call, other company officials, regulatory agencies, and other public officials. Finally, GO-311 sets forth detailed instructions for the meter service mechanic and the distribution mechanic in performing the gas odor or leak investigation, including the circumstances under which the on-call supervisor is to be contacted, and actions to be taken by the on-call supervisor under various circumstances. Such actions include contacting local police to secure entry to unoccupied or locked buildings; cutting-off service to eliminate the gas supply to the building; and installing curb valves to shut-off the gas supply.

With regard to the nature and extent of work direction given by the on-call supervisor to other employees either over the phone or at the scene of an emergency, on-call supervisors testified that such employees "automatically do what they need to do"; that "[t]hey do this every day. They know it better than I do. So therefore they take care of it"; and that they do not instruct employees "on how to do the physical aspects or

technical aspects of their job”.<sup>5</sup> Other than telling employees to search for a leak in other locations, there is no record evidence indicating any type of work direction given by the on-call supervisor to other employees. That includes the release of employees from the scene of an emergency, inasmuch as there is no requirement that an employee must secure authorization from the on-call supervisor before leaving the scene. There is also no evidence that the on-call supervisor inspects the work of other employees, or has any involvement in recording or verifying the number of hours worked by other employees.

A full-day training session was held in November 2003 for all individuals who serve as on-call supervisors, which included all SOS employees and all other undisputed supervisors who serve as on-call supervisors. The training included the distribution and review of GO-004 (Operations Emergency Plan), GO-240 (Testing of Service Lines), and GO-170 (Pressure Testing of Gas Mains). It also covered such issues as the dispatch function; personnel policies, including mutual assistance between areas, overtime, rest time, breaks and meals, reporting accidents, and fitness for duty testing<sup>6</sup>; “call before you dig” procedures; environmental concerns; and the LNG (liquefied natural gas) emergency response plan. At the conclusion of the training the participants were administered an “on call preparation test”, discussed various “scenarios”, and were supplied with a document entitled “Some suggestions that can be helpful depending on your situation.” Several of those “suggestions” nominally involved the direction of employees, including calling in additional mechanics; directing the crew to take their meal break if they are waiting for a “call before you dig” response; and having the on-call mechanic assist the distribution mechanic to help determine the extent of the leak if there is a lot of area to cover and a second distribution mechanic is not available.

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<sup>5</sup> Notably, one present SOS who has a considerable number of paid on-call hours described his role as an on-call supervisor at the scene of an emergency as that of a “mediator”.

<sup>6</sup> The fitness for duty testing guidelines distributed at the training address the mandatory testing that must be done when an employee driving a company vehicle is involved in certain types of accidents, and when any employee is suspected of being under the influence of drugs or alcohol. There is no evidence as to what the SOS at the training were instructed with regard to these guidelines, nor is there any evidence that any SOS has applied these guidelines while functioning as an on-call supervisor.



According to the Employer, no records are maintained that would reveal the number of hours spent by on-call supervisors on the phone, and it proffered no other evidence as to those hours. The Employer did introduce records (Employer Ex. 26) showing the number of hours for which on-call supervisors were paid the \$40 rate in 2003 and the first four months of 2004.<sup>7</sup> For those facilities encompassed by the petitioned-for unit, the Employer's records reveal that the five SOS employees at the Meriden facility who served as an on-call supervisor in 2003 were paid for their on-call time from a low of 27 hours to a high of 226 hours, with an average of 115 hours per employee, and in 2004 from a low of 6 hours to a high of 93 hours, with an average of 29 hours per employee. The one SOS employee in Danielson was paid for 7 on-call hours in 2003 and 7 on-call hours in 2004. Of the two SOS employees in Waterford, one received no paid on-call hours in either 2003 or 2004, and the other received two paid on-call hours in 2003 and none in 2004. The three SOS employees at the East Windsor facility<sup>8</sup> were paid for their on-call time from a low of no hours to a high of 110 hours in 2003, with an average of one hour per employee, and a low of no hours to a high of 61 hours in 2004, with an average of 20 hours per employee. For those facilities not encompassed by the petitioned-for unit, the Employer's records reveal that the three SOS at the Waterbury facility were paid for their on-call time from a low of 46 hours to a high of 97 hours in 2003, with an average of 65 hours per employee, and a low of 26 hours to a high of 93 hours in 2004, with an average of 68 hours per employee. The four SOS at the Norwalk facility were paid for their on-call time from a low of 128 hours to a high of 314 hours in 2003, with an average of 204 hours per employee, and a low of no hours to a high of 104 hours in 2004, with an average of 58 hours per employee. Finally, the three SOS at the Danbury facility were paid for their on-call time from a low of no hours to a high of 125 hours in 2003, with an average of 47 hours per employee, and a low of 3 hours to a high of 36 hours in 2004, with an average of 18 hours per

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<sup>7</sup> As noted above in footnote 3, the location of three SOS employees in the Capital Construction group set forth in Employer Ex. 26 is inconsistent with Construction Manager Flanagan's testimony offered by the Employer. Consistent with my finding in footnote 3, I have relied upon Flanagan's testimony to determine the location of each SOS employee in the Capital Construction group on Employer Ex. 26.

<sup>8</sup> This includes Curtis Benanshki, who left the petitioned-for unit in May 2004, but who was an SOS assigned to the East Windsor facility throughout 2003 and the first four months of 2004.

employee. As a percentage of their annual working time (2080 hours) in 2003, all SOS at all facilities were paid for their service as on-call supervisors from a low of 0% to a high of 15%; for 2004 (692 hours), the range was the same. The average percentage of their annual working time for which the SOS were paid for service as an on-call supervisor was 4% in 2003 and 5% in 2004. The total number of hours spent as an on-call supervisor (5 weeks at 120 hours per week) represents approximately 30% of an SOS employee's typical work year.

With regard to the \$40 per hour rate paid to SOS on-call supervisors for time actually spent at the scene of an emergency, the record reflects that all on-call supervisors receive the same rate. In addition, utilizing the petitioned-for employees average hourly rate of \$25.00 (\$51,000 average annual salary divided by 2080 hours), the \$40 per hour rate is slightly more than the typical time and one-half overtime rate paid by the Employer to its non-exempt unionized employees.

b. Analysis and Conclusion

The burden of proof rests upon the party alleging that an individual is a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Bennett Industries*, 313 NLRB 1363 (1994). A lack of evidence is construed against the party asserting supervisory status. The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999). The Board has found that a particular indicia of supervisory status has not been established if the evidence is in conflict or otherwise inconclusive regarding that indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Sears Roebuck & Co.*, 304 NLRB 193 (1991).

Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that the SOS are supervisors within the meaning of Section 2(11) of the Act. As noted above, there is no evidence that the SOS exercise any of the indicia of supervisory status while performing their work duties during their normal workday. Thus, the sole issue is whether the SOS are supervisors because they periodically serve as on-call supervisors outside of their normal workday.

It is well established that where an individual is engaged part of the time as a supervisor of unit employees and the rest of the time as a unit employee, “. . . the legal standard for a supervisory determination is whether the individual spends a regular and substantial portion of his working time in a supervisory position or whether such work is merely sporadic and insignificant.” *Gaines Electric Co.*, 309 NLRB 1077, 1078 (1992). See also *Aladdin Hotel*, 270 NLRB 838, 840 (1984).

Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that the SOS spend a substantial amount of their work time as on-call supervisors, or that when doing so they possess and exercise supervisory authority within the meaning of Section 2(11) of the Act. While there is no dispute that the SOS are regularly assigned as on-call supervisors throughout the course of the year, the evidence does not establish that such assignments constitute a “substantial” portion of their working time. In this regard, while several on-call supervisors spend between 10 and 15% of their overall working time as on-call supervisors at the scene of emergencies, others spend little or no time performing such duties at the scene of emergencies. Moreover, the average time spent per SOS is approximately 5%. In addition, on-call supervisors spend an undefined and incalculable number of hours performing on-call supervisor duties from their home via telephone.

Even assuming arguendo that the SOS spend a regular and substantial amount of their work time as on-call supervisors, the Employer has failed to establish that they possess and exercise supervisory authority within the meaning of Section 2(11) of the Act while serving as an on-call supervisor. In this regard, it is undisputed that the only arguably supervisory duties the SOS performs as an on-call supervisor involves the assignment and responsible direction of employees.

With regard to the assignment of employees, there is insufficient evidence to establish that the SOS, while serving as an on-call supervisor, assigns work to employees in a manner that requires the use of independent judgment. *Mississippi Power and Light Co.*, 328 NLRB 965 (1999); *Arizona Public Service Co.*, 182 NLRB 505 (1970).<sup>9</sup> More specifically, the SOS serving as an on-call supervisor has no input into the initial assignment or selection of employees to perform work at the scene of an

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<sup>9</sup> Although *Arizona Public Service Co.*, supra, was reversed by the Board in *Big Rivers Electric Corp.*, 266 NLRB 380 (1983), *Big Rivers* was subsequently reversed by the Board in *Mississippi Power and Light Co.*, supra.

emergency, as those assignments are made by the dispatcher pursuant to a previously established seniority list. See *Mississippi Power and Light Co.*, supra, at 972; *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000). Moreover, such assignments appear to be dictated by non-discretionary factors, i.e., a distribution mechanic is needed to determine the location of a gas leak, or a welder is needed to repair a leaking pipe. In addition, there is insufficient evidence to establish that an SOS on-call supervisor can require any employee to report to work, or that they have ever done so. See *Harborside Healthcare, Inc.*, supra. To the extent that the on-call supervisor has any impact on the re-assignment of employees at the scene of an emergency, there is no evidence that they make such determinations based upon their own assessment of either the relative skills and abilities of the employee or the nature and extent of the work being assigned. See *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). Rather, such determinations appear to be dictated by non-discretionary factors.

With regard to the responsible direction of employees, there is insufficient evidence to establish that the SOS, while serving as an on-call supervisor, responsibly directs employees in a manner that requires the use of independent judgment. See *Mississippi Power and Light Co.*, supra, at 973; *Arizona Public Service Co.*, 310 NLRB 477, 480 (1993). In this regard, I note particularly the absence of any evidence that the on-call supervisors are held accountable in any manner for the work performed by the employees at the scene of an emergency. See *Northeast Utilities Service Company v. NLRB*, 35 F.3d 621 (1<sup>st</sup> Cir. 1994); *Franklin Home Health Agency*, supra, at 831. I also note that the on-call supervisor's duties and responsibilities are very closely circumscribed by the Employer's extensive and detailed GOs, which significantly minimize the extent of the on-call supervisor's discretionary decision making vis-à-vis other employees. See *Dynamic Science, Inc.*, 334 NLRB 391 (2001); *Connecticut Light and Power*, 121 NLRB 768 (1958). In addition, there is always a designated system supervisor on-call who may, and under certain circumstances must, be contacted by the on-call supervisor during an emergency. See *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 393 (1989). There is also no evidence that the on-call supervisor directs or instructs employees to perform particular tasks or duties. *Mississippi Power and Light Co.*, supra, at 974. To the contrary, the evidence conclusively establishes that the

employees at the scene of an emergency know what to do and how to do it without any direction from the on-call supervisor. See *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001); *Evangeline of Natchitoches, Inc.*, 323 NLRB 223, 223-224 (1997). The occasional instruction to employees to search other areas for an undiscovered gas leak, which is required by the GOs, is, standing alone, an insufficient basis to confer supervisory status. To the extent that an on-call supervisor may change employee break and meal times, such authority has been found to be routine and not requiring the exercise of independent judgment. *Loyalhanna Care Center*, 332 NLRB 933, 935 (2000); *Youville Health Care Center, Inc.*, 326 NLRB 495, 496 (1998). Similarly, the authority to send employees for testing if they are in certain types of motor vehicle accidents or appear to be under the influence of drugs or alcohol, particularly where doing so is pursuant to Employer policy, is not an indicium of supervisory authority. See *Michigan Masonic Home*, 332 NLRB 1409, 1411 fn. 5 (2000); *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491, 497 (1993). The Employer's reliance on certain secondary indicia of supervisory status, including supervisory ratio, employee perception, ostensible authority, and special benefits, cannot confer supervisory status on the SOS in the absence of the primary indicia of supervisory status enunciated in Section 2(11) of the Act. See *Carlisle Engineered Products, Inc.*, 330 NLRB 1359, 1361 (2000); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). In this regard, I note that supervisory status under the Act cannot be accorded to the SOS serving as on-call supervisors simply because of the important responsibilities imposed upon them and the conceivable implications of their actions during an emergency. While their good judgment, accuracy and skill certainly impacts upon the safety and well being of other employees and the public during an emergency, it is an insufficient basis upon which to establish their supervisory status under the Act. See *Northeast Utilities Service Company v. NLRB*, supra; *Arizona Public Service Co.*, supra. Accordingly, I find that SOS are not supervisors within the meaning of Section 2(11) of the Act.

3. Appropriateness of petitioned-for unit

a. Facts

As noted above, the petitioned-for unit is limited to the approximately 10 SOS assigned to the Meriden, East Windsor, Danielson and Waterford facilities. The

Employer contends that a unit limited to those facilities is not appropriate, and that the only appropriate unit of SOS employees must be statewide in scope and include 10 SOS assigned to the Waterbury, Norwalk, and Danbury facilities.

The Petitioner asserts that the petitioned-for unit is co-extensive with its jurisdiction over the Employer's facilities located in the "eastern" portion of Connecticut, and that its sister Local 420 has jurisdiction over the remaining facilities located in the "western" portion of Connecticut. At the outset, I find that such geographic descriptions are not entirely accurate. In this regard, the Danielson and Waterford facilities are located in the far eastern portions of Connecticut, and the Norwalk and Danbury facilities are located in the far western portions of Connecticut. The remaining Meriden, Waterbury and East Windsor facilities are located approximately in the geographic center of Connecticut. More importantly, there is no evidence that the Employer groups any of its facilities by geographical location for administrative purposes.

The record reflects that of the five SOS in the Field Operations group, three are assigned to facilities encompassed by the petitioned-for unit: one in East Windsor, one in Meriden, and one in Waterford/Danielson. Of the remaining two SOS in Field Operations who are assigned to facilities not encompassed by the petitioned-for unit, one is assigned to Danbury and one is assigned to Norwalk. Of the 15 SOS in the Capital Construction group, seven are assigned to facilities encompassed by the petitioned-for unit: four in Meriden, one in East Windsor, one in Danielson and one in Waterford. Of the remaining eight SOS in the Capital Construction group who are assigned to facilities not encompassed by the petitioned-for unit, three are assigned to Waterbury, one to Danbury, and four to Norwalk. Thus, of the ten SOS in the petitioned-for unit, five are assigned to Meriden, two to East Windsor, two to Waterford, and one to Danielson. Of the remaining ten SOS who the Employer seeks to include in the petitioned-for unit, two are assigned to Danbury, five are assigned to Norwalk, and three are assigned to Waterbury.

As noted above, there are three construction supervisors who directly supervise the 15 SOS in the Capital Construction group. The three SOS who report to Construction Supervisor Douglas Faraday are located in East Windsor, Danielson and Waterford. Of the seven SOS who report to Construction Supervisor Richard Cerniglia,

four are located in Meriden, and three in Waterbury. The five SOS who report to Construction Supervisor David Hatfield are located in Norwalk and Danbury.

There is no evidence that any SOS in either the Field Operations group or the Capital Construction group have been permanently transferred either between any of the facilities encompassed by the petitioned-for unit, or between the facilities encompassed by the petitioned-for unit and those outside the unit. There is also no evidence that any SOS in the Field Operations group have been temporarily assigned or transferred between or among any of the facilities encompassed by the petitioned-for unit, or between the facilities encompassed by the petitioned-for unit and those outside the unit. However, there is evidence that SOS in the Capital Construction group have been temporarily assigned for short periods of time to perform their normal work duties at other facilities. This most often occurs with SOS who are assigned to the Meriden and Waterbury facilities, apparently because these are the closest facilities to each other, and also because Construction Supervisor Cerniglia supervises the SOS in the Capital Construction group who are assigned to the Meriden and Waterbury facilities. SOS assigned to the facilities encompassed by the petitioned-for unit may also telephonically communicate with SOS assigned to facilities outside the unit.

A monthly meeting is held by Manager of Capital Construction Ed Flanagan that is attended by all employees in the Capital Construction Group, including all SOS from all facilities, project engineers, construction supervisors, and clerical employees. The purpose of the meeting is to review procedures and “to provide communication within the company”. At the monthly meeting in March of this year, the Employer’s Human Resources director and an unspecified Vice-President attended the meeting and asked the employees if they had any “gripes or problems” or “issues and concerns”. Although not entirely clear, it appears that one of the concerns raised at the meeting involved the SOS job description. As a result, SOS in the Capital Construction group from throughout the State reviewed the existing job description and prepared a revised job description that was submitted to the Employer. As noted above, all SOS from throughout the State attended the on-call supervisors training in November 2003.

As noted above, the Petitioner represents approximately 250 of the Employer’s employees in several different bargaining units. According to the Petitioner, its jurisdiction covers the “eastern” portion of Connecticut, which it claims would

encompass the Meriden, East Windsor, Danielson and Waterford facilities. In contrast, the jurisdiction of the Petitioner's sister Local 420 covers the "western" portion of Connecticut, which the Petitioner claims would encompass the Waterbury, Danbury and Norwalk facilities. The Petitioner's counsel admitted on the record that "our petition at this point is limited to those areas in which the Union has the jurisdiction to seek membership". Most of the employees represented by the Petitioner are covered by a collective bargaining agreement through which the Employer jointly recognizes the Petitioner and Local 420 on a statewide basis. However, under the terms of that collective bargaining agreement, the Employer recognizes the Petitioner as the sole representative of the clerical employees at the Meriden, East Windsor and Waterford facilities.<sup>10</sup>

b. Analysis and Conclusion

The Board has long recognized that there is no statutory requirement that a unit for collective bargaining be the most appropriate unit. Rather, the Act only requires that the unit sought be "an" appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Therefore, a petitioner is not required to seek the "most" appropriate unit of employees, unless an otherwise appropriate unit does not exist. *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963). However, in the public utility industry, it is well established that system wide units are considered the "optimal" appropriate unit. *PECO Energy Co.*, 322 NLRB 1074 (1997). As a result, in the public utility industry, the Board will only permit units that are less than system wide in scope where there is "compelling evidence that collective bargaining in a unit less than system wide in scope was a 'feasible undertaking' and there was no opposing bargaining history". *Id.*, quoting *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973). In this regard, in those public utility cases where narrower units were found appropriate, the boundaries of the requested unit "conformed to a well-defined administrative segment of the utility

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<sup>10</sup> I take administrative notice of the petitions in Case Nos. 34-RC-1942 and 34-RC-2000, which were generally referred to in the record. In Case No. 34-RC-1942, the Petitioner and the Employer entered into a Stipulated Election Agreement in a unit of approximately six field technicians at the Meriden, East Windsor, Danielson and Waterford facilities, and the Petitioner was certified as the representative of that unit on April 2, 2002. In Case No. 34-RC-2000, the Employer and Local 420 entered into a Stipulated Election Agreement in a unit of approximately nine field technicians at the Danbury, Norwalk and Waterbury facilities. The results of that election were certified on December 24, 2002, reflecting that Local 420 did not receive a majority of votes in the election.



company's organization and could be established without undue disturbance to the company's ability to perform its necessary functions." Id.

The essential inquiry in any industry is whether a particular grouping of employees share a community of duties and interests sufficiently distinct from other employees so as to warrant their establishment as a separate unit. In determining the appropriate unit, the following community of interest criteria are considered: degree of functional integration, common supervision, employee skills, interchangeability, contact among employees, similarities in wages, hours, benefits and other terms and conditions of employment, and bargaining history. *Kalamazoo Paper Box Co.* 136 NLRB 134 (1962); *Franklin Mint Corp.*, 254 NLRB 714 (1981). In its recent decision in *Laboratory Corporation of America Holdings*, 341 NLRB No. 140 (May 28, 2004), the Board also considered "geographic proximity" in determining the appropriateness of a less than system wide multi-facility unit.

Based upon the above and the record as a whole, I find that there is insufficient evidence to establish the appropriateness of the petitioned-for unit. In this regard, SOS at all facilities share common skills, duties, wages, benefits, hours of work, and overall management, and SOS assigned to the Capital Construction group at the Meriden and Waterbury facilities share common supervision. The only evidence of interchange, transfer or contact between or among the SOS is limited to those SOS in the Capital Construction group, who are assigned to all facilities throughout the State, and who represent 75% of the 20 SOS employees. There is also no coherent geographic grouping to the facilities encompassed by the petitioned-for unit. In this regard, I take administrative notice of the fact that Meriden, where almost half of the employees in the petitioned-for unit are located, is twice as far from East Windsor than it is from Waterbury; it's the same distance from Norwalk as it is from Waterford; and it's 30 miles closer to Danbury than to Danielson. Similarly, East Windsor, where approximately one-quarter of the petitioned-for employees are located, is closer to Waterbury than it is to either Waterford or Danielson. Furthermore, the petitioned-for unit does not comport with any of the Employer's administrative or geographic groupings. *Laboratory Corporation of America Holdings*, supra; *Carolina Power & Light Co.*, 119 NLRB 742 (1957); *Mississippi River Fuel Corp.*, 110 NLRB 708 (1954). Finally, I note that the

parties have historically bargained on a system wide basis rather than by facility.<sup>11</sup> The fact that the petitioned-for unit conforms to the Petitioner's jurisdictional area is not controlling, as the Board has long held that "a union's territorial jurisdiction and limitations do not generally affect the determination of the appropriate unit." *Laboratory Corporation of America Holdings*, supra, at fn. 12. Thus, the evidence is insufficient to establish that the SOS in the petitioned-for unit share a community of interest so separate and distinct from the remaining SOS at other facilities to warrant their representation in a separate unit. Accordingly, I find that the petitioned-for unit is inappropriate, and that the only appropriate unit is one encompassing all SOS at all facilities in the State of Connecticut.

Although specifically requested to do so, the Petitioner has failed to affirmatively express a willingness to proceed to an election in any other unit. Rather, at the hearing it indicated that it would "consider" proceeding to an election in an alternative unit, and in its post-hearing brief it merely indicated that it "reserves the right to consider whether to seek representation" for an alternative unit. Moreover, as noted above, Petitioner's counsel admitted on the record that "our petition at this point is limited to those areas in which the Union has the jurisdiction to seek membership". Accordingly, under all the circumstances, I shall dismiss the petition.

#### ORDER

IT IS HEREBY ORDERED that the petition herein is dismissed.

#### [Right to Request Review](#)

[Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 24, 2004.](#)

Dated at Hartford, Connecticut this 10<sup>th</sup> day of June, 2004.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director

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<sup>11</sup> The Board does not consider itself found by a bargaining history resulting from a consent election in a unit stipulated by the parties rather than one determined by the Board. *Laboratory Corporation of America Holdings*, supra, slip op. at 5. Thus, the stipulated election agreements in Case Nos. 34-RC-1942 and 34-RC-2000, which only involved a total of 15 employees, do not support a bargaining history on less than a system wide basis.